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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO.  | CONFIRMATION NO. |
|--|-------------|------------------------|----------------------|------------------|
| 10/615,576   | 07/08/2003  | Terry A. Kingsmore JR. | 16356.811 (DC-05083) | 8991             |
| 27683 7590 06/03/2009<br>HAYNES AND BOONE, LLP<br>IP Section<br>2323 Victory Avenue<br>Suite 700<br>Dallas, TX 75219 |             |                        |                      |                  |
| EXAMINER   |             |                        |                      |                  |
| TRAN, CON P  |             |                        |                      |                  |
| ART UNIT   |             | PAPER NUMBER           |                      |                  |
| 2614   |             |                        |                      |                  |
| MAIL DATE  |             | DELIVERY MODE          |                      |                  |
| 06/03/2009   |             | PAPER                  |                      |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/615,576

**Applicant(s)**

KINGSMORE ET AL.

**Examiner**

CON P. TRAN

**Art Unit**

2614

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Vivian Chin/  
Supervisory Patent Examiner, Art Unit 2614

Continuation of 11, does NOT place the application in condition for allowance because: In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In determining the unobviousness of claim invention, examiner formulated the rejections based on combinations of references, Howell in view of Viletto and further in view of Hosoi. As presented in the Final Office Action, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the latches, holes taught by Hosoi to the speaker assembly, battery housing of Howell, respectively; and it would have been recognized by one of ordinary skill in the art that applying the known technique taught by Hosoi to the information handling system of Howell would have yielded predictable results and resulted in an improved system that would positively latch the speaker container to the battery housing as claimed for purpose of being able easily attaching and removing, as suggested by Hosoi in column 2, lines 51-52; and

it would have been obvious to one of ordinary skill in the art at the time the invention was made, those of ordinary skill in the art when facing a design need of providing less than all of the cells included in the plurality of cells are removable to define a selective portion of the battery housing and create a space to receive a speaker for the information handling system would have recognized and would have been obvious to try to modified the battery housing of Howell in view of Hosoi with the removable batteries cells taught by Viletto such that would have removed less than all of the plurality of cells and to create a space to receive a speaker without changing the dimensions of the battery housing as claimed since there are a finite number of identified, predictable potential solutions (i.e., remove all of the cells, remove a portion of the plurality of cells) to the recognized need (i.e., modifying), and one of ordinary skill in the art could have pursued the known potential solutions with a reasonable expectation of success. The motivation is for purpose of being powered reliably using a pack of rechargeable batteries, as suggested by Viletto in column 1, lines 31-33. In addition, since the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; and this is only selection and application of very pertinent art.

As such the claims remain rejected.